

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013071141

ORDER GRANTING MOTION FOR
STAY PUT

On July 25, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the West Contra Costa Unified School District (District). On October 21, 2013, Student filed a motion for stay put, asserting that her last agreed upon and implemented education program is Bayhill Academy, a certified nonpublic school (Bayhill). On October 24, 2013, the District filed an opposition on the ground that Student's last agreed upon and implemented education program is home-hospital instruction pursuant to her November 3, 2010 individualized education program (IEP), as amended on February 15, 2012. Student submitted a response on October 25, 2013.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

Student contends that her last agreed upon and implemented educational program is Bayhill, where she began attending on August 27, 2013, after Steve Collins, West Contra Costa Unified School District Special Education Local Plan Area Director, informed Bayhill on August 26, 2013, that the District approved her attendance there. Additionally, Bayhill would provide Student with speech and language services, twice a week, thirty minutes a session. The District acknowledges Mr. Collins' August 26, 2013 statement to Bayhill, but asserts that Bayhill is not her stay put placement because the parties never effectuated placement through a settlement agreement or IEP. Student seeks an order of stay put because the District has not entered into an agreement with Bayhill for payment and Bayhill has informed Student that she will need to leave without such a contract.

This matter is complicated by the fact that Mr. Collins agreed for Student to attend Bayhill pending finalization of a settlement agreement or IEP, and that Bayhill accepted Student based on Mr. Collins' statement that Student could attend. However, the District did attempt to convene an IEP team meeting to effectuate Student's placement at Bayhill, but Student's legal counsel wished to postpone the IEP team meeting while she was on medical leave and for assessments to be completed so that goals could be developed. Additionally, Student's counsel's medical leave prevented the parties from finalizing a written settlement agreement.

Lost in the delay in finalizing a settlement agreement and IEP is Student, who has attended Bayhill for the last two months. While the parties have not finalized the settlement agreement or IEP as envisioned on August 26, 2013, the District did not present evidence, such as a declaration from Mr. Collins, that Student's placement was conditioned on the parties entering into a settlement agreement or future IEP team decision. Therefore, Student's last agreed upon and implemented educational program is Bayhill with speech and language services as agreed upon by Mr. Collins on August 26, 2013.

ORDER

Student's motion for stay put is granted at Bayhill according to the provisions in Mr. Collins' August 26, 2013 agreement with Bayhill.

Dated: October 29, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings